

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES ANDREW HEACOCK,

Defendant-Appellant

UNPUBLISHED

December 11, 2007

No. 272354

Barry Circuit Court

LC No. 06-000048-FC

Before: Davis, P.J., and Murphy and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for numerous counts of first- and second-degree criminal sexual conduct (CSC), MCL 750.520b and MCL 750.520c. We affirm.

Defendant argues that he was denied effective assistance of counsel at trial because trial counsel elicited, from an expert witness, testimony regarding the statistical probability of false accusations of sexual assault. Specifically, the expert testified that the YMCA's statistics, which essentially parallel some national studies, indicated that between two and three percent of allegations are false. Defendant argues that this information evidenced his guilt rather than innocence. Defendant further argues that trial counsel compounded her error by failing to object to the admission of the statistical evidence, which he argues was inadmissible. Independent of the ineffective assistance claim, defendant directly challenges the admission of the statistical evidence.

With respect to the admission of the evidence, the issue was arguably waived, *People v Carter*, 462 Mich 206, 215, 219; 612 NW2d 144 (2000), and, minimally, the issue was forfeited, limiting our review to plain error affecting substantial rights, *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). We find it unnecessary to determine whether there was plain error because, assuming error, it did not prejudice defendant, nor has it been shown that defendant is actually innocent or that the fairness, integrity, and public reputation of the judicial proceedings was seriously affected independent of defendant's innocence. *Id.* at 763. The evidence of defendant's guilt was overwhelming. The victim described, in detail, the sexual acts defendant perpetrated against her. The victim's brother corroborated parts of the victim's testimony, telling the jury that he saw defendant touch the victim's breasts and vaginal area and that the victim spent a lot of time in defendant's bedroom. The evidence of guilt was bolstered by the victim's knowledge of the spots on defendant's penis and scrotum. Given the compelling testimony offered against defendant, we cannot conclude that the admission of the statistical rate

of false allegations affected the verdict, assuming that the statistics are even inaccurate, which is not claimed, and that a proper foundation could not have been laid. Our harmless-error conclusion is further supported by the fact that the statistical evidence did reflect that false accusations are at times made by children.

With respect to the ineffective assistance of counsel argument, the issue presents a mixed question of fact and constitutional law that we review, respectively, for clear error and de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). In *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001), our Supreme Court, addressing the basic principles involving a claim of ineffective assistance of counsel, stated:

To justify reversal under either the federal or state constitutions, a convicted defendant must satisfy the two-part test articulated by the United States Supreme Court in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). See *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). “First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not performing as the ‘counsel’ guaranteed by the Sixth Amendment.” *Strickland*, *supra* at 687. In so doing, the defendant must overcome a strong presumption that counsel’s performance constituted sound trial strategy. *Id.* at 690. “Second, the defendant must show that the deficient performance prejudiced the defense.” *Id.* at 687. To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel’s error, the result of the proceeding would have been different. *Id.* at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim. See *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

We cannot conclude that counsel’s performance was deficient. The answer regarding the statistical data was not directly responsive to the question asked by counsel, which was simply whether the witness had ever dealt with a case of false sexual allegations. Moreover, when faced with the response that alluded to statistics and national studies, counsel was able to limit any possible negative effect by eliciting, in a follow-up question, that the percentage of false accusations did not take into consideration any adult disclosures that previous childhood claims of sexual abuse were untrue. Counsel did elicit testimony that false accusations do occur. Moreover, assuming deficient performance, and for the reasons stated above, we cannot conclude that defendant established the existence of a reasonable probability that, but for counsel’s error, the result of the proceedings would have been different.

Affirmed.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Deborah A. Servitto